

IMPORTANT NOTICE

SETTLEMENT OF CLASS ACTION - JUVENILE PAROLE REVOCATION

L.H. v. Schwarzenegger, E.D. Cal. No. 2:06-CV-02042-LKK-GGH

Deadline for Comments on Fairness of Settlement:
September 12, 2008

Hearing on Fairness of Settlement:
October 6, 2008, 10:00 a.m.
United States Courthouse in Sacramento, Courtroom 4.

L.H. v. Schwarzenegger is a statewide class-action lawsuit that seeks to change the way California treats persons in the juvenile system who are arrested on parole violations. A proposed settlement has been reached. The federal court must now decide if the settlement is fair. This notice explains the settlement, how you can read it, and how you can write to the court about whether you think it is fair.

The *L.H. v. Schwarzenegger* class action was filed in 2006. If you are a California juvenile parolee, you are a member of the L.H. class (*i.e.*, the group that is impacted), whether you are out on parole, being held in jail or prison on revocation charges, or serving a revocation term. The lawyers for the parolees are Rosen, Bien & Galvan LLP, Youth Law Center, and Bingham McCutchen LLP.

The individual defendants in this case are: Arnold Schwarzenegger, Governor of the State of California and Chief Executive of the state government; Matthew L. Cate, Secretary of the California Department of Corrections and Rehabilitation (“CDCR”), David Runnels, Undersecretary of CDCR, Bernard Warner, Chief Deputy Secretary of the Division of Juvenile Justice (“DJJ”), Carolina Garcia, Acting Director, Division of Juvenile Parole, Chuck Supple, Executive Officer

of the Juvenile Parole Board (“JPB”), and Joyce Arredondo, Joseph Compton, Susan Melanson, Thomas Martinez, and Askia Abdulmajeed, all of whom are Commissioners or Board Representatives of the JPB.

The defendants include state officials in charge of the California Department of Corrections and Rehabilitation (“CDCR”), Division of Juvenile Justice (“DJJ”), Board of Parole Hearings (“BPH”), and Juvenile Parole Board (“JPB”). The CDCR, DJJ, BPH, and JPB officials are represented by William Kwong, Deputy Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102.

The L.H. lawsuit challenges violations of juvenile parolees' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Rehabilitation Act, and the Americans with Disabilities Act. The lawsuit asked the federal court to order the CDCR, DJJ, BPH, and JPB to change juvenile parole revocation procedures to comply with the Constitution and the ADA. No money damages were asked for, and none will be awarded in this class action case.

The L.H. lawsuit claims that the CDCR, DJJ, BPH, and JPB violated the Constitution and the ADA in the following specific ways:

- The CDCR, DJJ, BPH, and JPB arrest and hold parolees for weeks or months without any hearings to find out whether there is probable cause to hold them.
- The CDCR, DJJ, BPH, and JPB do not tell parolees of their rights or the charges against them before seeking waivers or admissions.
- The CDCR, DJJ, BPH, and JPB do not give parolees enough notice of the charges against them before the revocation or “Morrissey” hearing.

- The CDCR, DJJ, BPH, and JPB use forms in parole revocation that are too hard to read.
- The CDCR, DJJ, BPH and JPB do not provide the help that parolees with disabilities and other special communication needs require to understand documents and forms, to understand their rights and the charges against them, to speak on their own behalf, and to understand what is being said and done in the revocation process.
- The CDCR, DJJ, BPH, and JPB do not provide attorneys to represent parolees who should get attorneys under the Due Process Clause. When the CDCR, DJJ, BPH, and JPB do provide attorneys, the attorneys do not get enough time to represent the parolee, and do not get enough information from the CDCR, DJJ, BPH, and JPB.
- The CDCR, DJJ, BPH, and JPB do not provide enough help for parolees with disabilities, mental illness, or other problems that make it hard for them to decide on waivers or admissions or to participate in revocation hearings.
- The CDCR, DJJ, BPH, and JPB sometimes do not allow parolees to present witnesses and evidence needed to defend themselves at revocation hearings.
- The CDCR, DJJ, BPH, and JPB sometimes do not allow parolees to cross-examine persons who provide evidence against them.
- The JPB 's system for parole revocation appeals is unfair.

On September 19, 2007, the Court granted Plaintiffs' Motion for Partial Summary Judgment, holding that the State's failure to hold probable cause hearings violated the Constitution. On January 29, 2008, the

Court granted in part and denied in part Plaintiff's motion for preliminary injunction, ordering that the CDCR, DJJ, BPH, and JPB begin appointing counsel to represent juvenile parolees at parole revocation proceedings, to provide counsel with access to necessary files sufficiently in advance of the hearing to allow adequate preparation, and to develop sufficiently specific draft policies and procedures to ensure continuous compliance with all of the requirements of the Americans with Disabilities Act. All of the other issues in the case were not yet decided by the Court. The settlement means that these issues will not go to trial.

On June 4, 2008 the parties and their attorneys entered into a negotiated plan in the form of a "Stipulated Order for Permanent Injunctive Relief" ("Permanent Injunction"), which would settle the lawsuit, and require the CDCR, DJJ, BPH, and JPB to change the juvenile parole revocation procedures to fix the problems listed above. If approved by the Court, the Permanent Injunction will require many changes in the revocation system. Under the agreement, the changes in parole revocations are to be fully implemented by December 15, 2008. Here are some of the most important changes.

- The CDCR, DJJ, BPH, and JPB must give the parolees notice of the charges within 3 business days after the placement of a parole hold.
- All juvenile parolees will receive attorneys in the revocation process. Attorneys will help the parolees decide on any screening offers, and will represent parolees at any hearings.
- The CDCR, DJJ, BPH, and JPB must provide attorneys with all non-confidential information they intend to use against the parolee. Due process limits what information the CDCR, DJJ, BPH, and JPB can call confidential.

- Juvenile parolees' attorneys will be able to review parolees' field files.
- Attorneys will be provided with training on how to represent juvenile parolees effectively.
- Final revocation hearings must be held on or before the 35th calendar day after placement of the parole hold.
- Juvenile parolees' attorneys will be able to subpoena and present witnesses and documents for final revocation hearings, in the same way that the state can subpoena and present witnesses.
- The CDCR, DJJ, BPH, and JPB must provide a probable cause hearing within 13 business days after the juvenile parolee has been placed on a parole hold to find out if there is probable cause to hold the parolee.
- If the attorney can show that there is no basis to continue holding the parolee, the CDCR, DJJ, BPH, and JPB must provide an expedited (faster) hearing, six to eight business days after the parolee receives notice of the charges.
- At the preliminary hearing, juvenile parolees will be allowed to present evidence to defend against the charges, or to show that revocation is not appropriate. The parolee and parolee's attorney will be allowed to present such evidence through the parolee's testimony, or through written documents.
- The CDCR, DJJ, BPH, and JPB will not be permitted to use hearsay evidence against a parolee in a manner that violates the parolees' right to confront his or her accusers.

- Sentencing for a violation of parole will be limited to a determinate (fixed) sentence of no more than one year for juveniles in parole revocation. To extend revocation beyond the revocation term, there will have to be a hearing before the Juvenile Parole Board, at which the parolee will be represented by an attorney. Temporary Detention, Time Adds, and Parole Consideration Hearings will no longer be available as a means to extend a parole revocation term.
- The CDCR, DJJ, BPH, and JPB will provide all juvenile parolees with a clearer, prompt appeal system, with appeals to be decided within 10 business days. Parolees will have the right to assistance of an attorney in preparing their appeals.
- The CDCR, DJJ, BPH, and JPB will identify and track juvenile parolees with disabilities and other effective communication needs.
- A juvenile parolee with a disability or communication need will be provided with extra time with an attorney to prepare for hearings for such parolees.
- The CDCR, DJJ, BPH, and JPB will provide forms in formats to accommodate juvenile parolees with a disability or communication need.
- The CDCR, DJJ, BPH, and JPB will provide reasonable accommodations, such as interpreters, hearing devices, computer readers and magnifying devices, during the parole revocation process for juvenile parolees with a disability or communication need.
- The CDCR, DJJ, BPH, and JPB will provide a grievance process to promptly address complaints of denials of accommodations for a disability or communication need.

- The CDCR, DJJ, BPH, and JPB will no longer have a blanket policy of mechanically restraining all juvenile parolees during parole revocation proceedings, and new policies governing the appropriate use of such restraints will be implemented.
- The federal court will keep jurisdiction to enforce these requirements.

The settlement does not affect juvenile parolees' ability to sue the CDCR, DJJ, BPH, and JPB for money damages regarding parole revocation, or to petition for a writ of habeas corpus. However, in any case asking for class or systemic relief, CDCR, DJJ, BPH, and JPB officials may argue that the lawsuit should be dismissed because of the L.H. settlement.

As part of this settlement, the attorneys for the parolees will ask the Court to have defendants' pay for attorneys' fees and expenses. The amount of these fees will be decided by the Court.

The *L.H. v. Schwarzenegger* proposed settlement is set forth in a "Stipulated Order for Permanent Injunctive Relief." You can read this document at the prison law library, jail library, or parole office.

Comments On the Fairness of the Settlement Are Due September 12, 2008. Parolees can write to the federal court about whether the settlement is fair and whether they object to attorneys' fees. The federal court will consider written comments when deciding whether to approve the settlement. Comments about the fairness of the settlement **MUST** include at the top of the first page the case name, *L.H. v. Schwarzenegger*.

Comments must be postmarked by September 12, 2008, and must be sent to the following address:

Clerk of the Court
United States District Court
Eastern District of California
501 "I" Street
Sacramento, California 95814

The Court has scheduled a hearing on the fairness of the settlement for **October 6, 2008**, 10:00 a.m. at the United States Courthouse in Sacramento, at the above address, in Courtroom 4.

For more information regarding this settlement, you may contact the juvenile parolees' lawyers at the following address and phone number:

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Large print and audio tape versions of this document are available in the prison law library, jail library and parole office.